



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

JRE
Docket No: 166-00
20 November 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 18 May 1990, the Record Review Panel of the Physical Evaluation Board (PEB) made preliminary findings that you were unfit for duty because of spondylolysis and low back pain, each of which existed prior to your enlistment (EPTE), and neither of which was aggravated by your service. You accepted those findings on 4 June 1996,, and were discharged on 2 August 1990, without entitlement to disability benefits administered by the Department of the Navy. On 22 January 1999, the Department of Veterans Affairs (VA) determined that the spondylolysis was not incurred in or aggravated by your service, and denied a rating for that condition; however, it concluded that your low back pain was incurred during your naval service, and assigned you a 40% rating.

The Board noted that the ultimate determination of the whether or not a condition is EPTE is a matter within the purview of the PEB. As indicated above, the PEB determined that both of your conditions were EPTE, not service aggravated, and you agreed. The Board was not persuaded that that determination was erroneous or unjust. The fact that the VA reached a different conclusion is not binding on the Board, and it is not considered probative of the

existence of material error or injustice in your record. In addition, the Board noted that even if it is assumed, for the sake of argument, that your back condition was incurred in service, it would not have been ratable above 10% disabling in 1990. The Board regrets that you were given erroneous advice by VA officials shortly after your discharge from the Navy.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director